are charged, the whole of which are not proved, but the part which is proved still constitutes an offence. (Section 238.)

For example, a charge may set out that accused has "committed breach of trust as a carrier of goods": proof may fail that he was actually a carrier, but still the rest may be proved: here then he may be lawfully convicted of simple "breach of trust."

§ 6.—*Various Persons concerned in one Offence.*

It often happens that several persons are concerned in one offence, some as principals, others as abettors: some may have actually committed offences: others may have done what amounted to an attempt only. Also the several persons engaged in one transaction may have done different acts which constitute different offences. In all these cases the Court may decide (section 239) whether it is convenient to try them together (appropriate charges being made against each), or separately.

Section VIII.—Execution of Sentence and Recovery of Fines.

§ 1.—*Imprisonment.*

Passing over the confirmation and execution of sentences of death and transportation, I proceed to sentences of imprisonment. A special warrant, signed and sealed by the Judge or Magistrate, is necessary. (Section 383.) This warrant is returned by the Jailor when the time is up (or if otherwise the prisoner is released on due authority), and with an endorsement under his signature showing the manner in which the sentence has been executed.

2.—*Recovery of Fine.*

Fines are levied as directed in section 386. The Court may issue a warrant for levy by distress and sale of any *movable* property belonging to the offender: and this is done in all cases whether there has been a sentence of further prison in default of payment or not, since the fine has to be recovered if possible in

any case. But of course as soon as the fine is paid, the prisoner, suffering only in default of payment, is let go, and if a part is paid a corresponding part of the term also is remitted. (Indian Penal Code, section 69). This is a matter of substantive law, being part of the nature and condition of the punishment of fine; so also it should be remarked that the time within which a fine remains leviable, and the liability of heirs to pay the fine are matters of *substantive* law. (Indian Penal Code, section 70.) Fines when recovered can always, under section 545, be devoted to (1) *compensate* deserving persons for expenses incurred properly in prosecuting the offender; (2) in compensation for the offence.

Under the Forest Act special power is given, under section 75, to the Local Government, to make rules for the payment of fine proceeds, in reward to informers, which, it will be observed, is not contemplated by the Procedure Code.

3.—*Imprisonment in default of Fine.*

In cases where imprisonment as well as fine is awardable for the offence, imprisonment in default of fine cannot, by the Penal Code, exceed an additional fourth part of the imprisonment provided for the offence. The Procedure law further restricts each particular Magistrate ordering imprisonment in default to one-fourth *his particular powers*, if there is a substantive sentence of prison besides; and such order must not, of course, be in excess of the term allowed by the Penal Code.

If the Magistrate might have awarded imprisonment as well as fine, but only awards fine, then the imprisonment in default may be up to one-fourth of the imprisonment prescribed for the offence, without the further restriction just alluded to. (The Magistrate cannot of course exceed his full powers in any case.)

Where the punishment awardable is fine only, the term in default is regulated by section 67, Indian Penal Code, and the imprisonment is simple: it may, as far as Procedure law is concerned, amount to the whole term for which the Magistrate is competent to imprison.